

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  MR. AND MRS. GREGORY SWECKER,  Complainants,  vs.  MIDLAND POWER COOPERATIVE,  Respondent.	DOCKET NO. FCU-99-3 (C-99-76)
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**ORDER AMENDING PROPOSED DECISION AND ORDER**

(Issued May 18, 2000)

On March 28, 2000, the Proposed Decision and Order was issued in this case. This Order amends that Proposed Decision and Order.

On April 10, 2000, Midland Power Cooperative (Midland), Central Iowa Power Cooperative (CIPCO), and the Iowa Association of Electric Cooperatives (IAEC) filed a "Joint Motion to Reconsider and Joint Motion to Reopen Hearing." On April 24, 2000, the Consumer Advocate Division of the Department of Justice (OCA) filed an "Answer and Objection to Joint Motion to Reconsider and Reopen Hearing." On April 24, 2000, the Sweckers filed a "Resistance to Motion to Reconsider and to Reopen Hearing." On April 26, 2000, the undersigned issued an Order Granting Motion to Reopen and Denying Motion Regarding Twelve-Day Notice. In the Order, the parties were granted the opportunity to file written evidence and argument

regarding several issues surrounding the legality of the disconnection of the Sweckers' single-phase service by Midland in March of 1999.

On May 10, 2000, the Office of Consumer Advocate filed a "Waiver of Right to Present Additional Evidence and Argument." The Sweckers filed a "Supplemental Resistance to Motion to Reconsider and to Reopen Hearing" on the same date. Also on May 10, 2000, Midland filed "Additional Prepared Testimony and Exhibits of Donald A. Severson," "Additional Prepared Testimony and Exhibits of Roger Wieck," and "Additional Argument on Behalf of Respondent."

This Order amends only those portions of the Proposed Decision and Order that relate to the issue of the disconnection of power to the Sweckers' farm.

### **SUPPLEMENTAL FINDINGS OF FACT**

1. Midland has adopted Section 6 of its tariff that pertains to disconnection of a member-consumer's electric service. (Additional testimony of Roger Wieck)
2. On January 13, 1999, Midland mailed a bill to the Sweckers for their December, 1998 usage. (Additional testimony of Roger Wieck)
3. The Sweckers did not pay the bill. (Informal Complaint file; additional testimony of Roger Wieck)
4. On February 4, 1999, Midland mailed a disconnect notice to the Sweckers informing them if they did not pay the amount due (\$149.29) prior to

February 16, 1999, their service would be subject to disconnection. (Additional testimony of Roger Wieck and attached Exhibit C)

5. The Sweckers did not pay their bill by February 16, 1999, but Midland did not disconnect the Sweckers' service. (Informal Complaint file; additional testimony of Roger Wieck)

6. At 8:06 p.m. on February 18, 1999, Midland's computer automated telephone call system placed a call to the Sweckers suggesting they contact Midland to take care of paying their past due bill. (Additional testimony of Roger Wieck and attached Exhibit E)

7. The Sweckers did not contact Midland and did not pay their bill. (Additional testimony of Roger Wieck; Informal Complaint file) Consequently, on February 22, 1999, the Sweckers were posted for non-payment of account and a "collect tag" was left at the Sweckers' home requesting payment of \$201.79 (\$149.29 plus a \$52.50 trip charge) by February 23, 1999. (Additional testimony of Roger Wieck and attached Exhibits F and G) The tag stated the Sweckers' electric service would be disconnected if they did not settle the matter by February 23, 1999 at 10:00 a.m. (Exhibit G)

8. The Sweckers did not pay for their service, and an additional bill of \$182.53 became delinquent on March 3, 1999. (Additional testimony of Roger Wieck and attached Exhibit H; Informal Complaint file)

9. Midland mailed a second disconnect notice to the Sweckers on March 5, 1999. (Additional testimony of Roger Wieck and attached Exhibit I) This

disconnect notice informed the Sweckers if they did not pay the past due amount of \$336.80 prior to March 17, 1999, their service was subject to disconnection. (Additional testimony of Roger Wieck and attached Exhibit I)

10. On March 17, 1999, at 6:52 p.m., a computer automated telephone call was made to the Sweckers suggesting they contact Midland to take care of paying the past due bill. (Additional testimony of Roger Wieck and attached Exhibit J)

11. The Sweckers did not pay their bill. (Informal Complaint file; additional testimony of Roger Wieck) Therefore, on March 19, 1999, the Sweckers were posted for non-payment of their account and a "collect tag" was left at the Sweckers' home requesting payment of \$389.30 (\$336.80 plus a \$52.50 trip charge) by March 22, 1999. (Additional testimony of Roger Wieck and attached Exhibit K) The tag stated the Sweckers' electric service would be disconnected if they did not settle the matter by March 22, 1999 at 8:00 a.m. (Exhibit K)

12. There is a dispute in the testimony between Mr. Severson and Mrs. Swecker as to whether a telephone conversation took place between the two on the morning of March 19, 1999 regarding the disconnection. (Additional testimony of Mr. Severson and Mrs. Swecker) Mr. Severson sent a letter to Mrs. Swecker on March 19, 1999, in which he stated "As discussed with you on the phone this morning, we had delayed disconnecting your service for non-payment in order to review once more your complaints of unjust treatment and discrimination, which have most recently been placed before FERC." (Additional testimony of Mr. Severson and attached Exhibit A) Since the letter was written on the same day as the alleged

telephone conversation and refers to the conversation, I find Mr. Severson's testimony to be more credible, and find that the conversation did take place. (Additional testimony of Mr. Severson and attached Exhibit A; additional testimony of Mrs. Swecker) In the conversation and the letter, Mr. Severson informed Mrs. Swecker that Midland would proceed with the disconnection on March 22, 1999 unless full payment was received by then. (Additional testimony of Mr. Severson and attached Exhibit A) In the letter, Mr. Severson also stated that the Sweckers' issues before FERC were separate from charges for electric service they had already received. (Exhibit A)

13. On Sunday, March 21, 1999, Mr. Swecker delivered to Midland's after-hours drop box a check for \$2,889.30 and a letter. (Additional testimony of Mr. Swecker; additional testimony of Mr. Severson; Informal Complaint file) Mr. Swecker intended that this payment satisfy the past due bills and pay the amount he believed was necessary to establish three-phase service. (Additional testimony of Mr. Swecker; additional testimony of Mr. Severson and attached Exhibits B and C) (See the Proposed Decision for details of the dispute between the Sweckers and Midland regarding the correct tariff to be applied for three-phase service.) In his letter, Mr. Swecker stated the check included \$389.30 for the past due bill, and \$2500 for connection of three-phase service. (Exhibit B) Mr. Swecker also stated in the letter "By virtue of the enclosed check Midland Power shall provide the requested service by Friday March 26, 1999." (Exhibit B) On the memo line on the check, Mr. Swecker

stated \$2500.00 was for three-phase service under tariff section five and \$389.30 was for the past due electric bill. (Exhibit C)

14. On the morning of March 22, 1999, Mr. Severson reviewed the restrictions on the check and in the letter and decided Midland could not accept the Sweckers' check. (Additional testimony of Mr. Severson) He then attempted to call the Sweckers to explain why Midland would not accept the check, but Mrs. Swecker hung up the telephone once Mr. Severson identified himself. (Additional testimony of Mr. Severson) Mr. Severson then prepared a letter explaining why Midland would not accept the Sweckers' check, discussing the tariff dispute, and informing the Sweckers their power would be disconnected unless they provided payment of \$389.30 without restriction. (Additional testimony of Mr. Severson and attached Exhibit D)

15. On March 22, 1999, Midland's crew took Mr. Severson's letter to hand deliver to the Sweckers, and left it attached to the door hanger disconnect notice because the Sweckers did not answer the door. (Additional testimony of Mr. Severson) Midland's crew then disconnected the Sweckers' service at 2:00 p.m. on March 22, 1999. (Additional testimony of Roger Wieck and attached Exhibit L)

16. Midland made a diligent attempt to contact the Sweckers by telephone and in person on March 22, 1999 prior to the disconnection. (Additional testimony of Mr. Severson)

17. In a letter responding to the complaint filed by the Sweckers before the Iowa Utilities Board, Midland stated it had disconnected the Sweckers' service for

nonpayment of the past two months of electric bills, and that Midland “was not willing to accept the payment for fear of Swecker then arguing that Midland Power had agreed to his terms for the service extension, including a date of performance that would have been difficult if not impossible to meet (about 4 days).” (Informal Complaint file)

18. Midland gave the Sweckers two twelve-day notices prior to the disconnection. (Additional testimony of Mr. Wieck and attached Exhibits C and I) Finding of Fact number 4 in the Proposed Decision is hereby amended.

### **CONCLUSIONS OF LAW**

1. 199 IAC 20.4(15) contains the requirements for disconnection of service. Midland’s tariff section 6 also contains disconnection requirements that are identical to those contained in the Board rule. Midland complied with the requirements of 199 IAC 20.4(15) and its own tariff in all respects in disconnecting the Sweckers’ service. Conclusion of Law number 19 in the Proposed Decision is hereby amended.

2. Midland was not obligated under 199 IAC 20.4(15)"h"(6) to provide any additional notice or opportunity to cure other than the notices and opportunities provided. The Sweckers were not disputing the accuracy of their past-due bill. They were attempting to tie the tariff dispute to the past due bill when the two were completely separate issues.

3. Midland was not obligated to accept the Sweckers' check because it contained restrictions relating to the outstanding tariff dispute between the parties and a requirement Midland perform service within four days. Midland's fear that it would have been obligated to meet the restrictions contained on the check and in Mr. Swecker's letter if it cashed the check was well-founded. Hoffman v. Ralston Purina Co., 86 Wis 2d 445, 273 NW 2d 214 (1979); Laverty v. Hawkeye Security Ins. Co., 140 NW 2d 83 (Iowa 1966).

**IT IS THEREFORE ORDERED:**

1. Paragraph eight of the ordering clauses in the Proposed Decision is hereby amended. Midland may charge the Sweckers the \$52.50 trip charge for the disconnection, and may charge the Sweckers the reconnection fee.

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Raymond K. Vawter, Jr.  
Executive Secretary

Dated at Des Moines, Iowa, this 18<sup>th</sup> day of May, 2000.